

Exhibit 38
to Mao Declaration ISO
Plaintiffs' Motion for Leave to
Amend Complaint

Public Redacted Version

16 ***HIGHLY CONFIDENTIAL*** ATTORNEYS' EYES ONLY ***

18 | VIDEOTAPED DEPOSITION OF ERIC MIRAGLIA

19 *VIA REMOTE COUNSEL VIDEOCONFERENCE*

20 | TUESDAY, OCTOBER 25, 2022

21 VOLUME I

23 STENOGRAPHICALLY REPORTED BY:

24 MEGAN F. ALVAREZ, RPR, CSR No. 12470

25 | JOB NO. 5545552; PAGES 1 - 243

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ANIBAL RODRIGUEZ, JULIEANNA
MUNIZ, ELIZA CAMBA, SAL CATALDO,
EMIR GOENAGA, JULIAN SANTIAGO,
HAROLD NYANJOM, KELLIE NYANJOM,
AND SUSAN LYNN HARVEY,
INDIVIDUALLY AND ON BEHALF OF ALL
OTHERS SIMILARLY SITUATED,
PLAINTIFFS,
vs.
GOOGLE LLC,
DEFENDANT

NO. 3:20-CV-04688

GOOGLE LLC,
DEFENDANT.

Videotaped Videoconference Deposition of
ERIC MIRAGLIA, Volume I, taken on behalf of Plaintiffs,
VIA REMOTE COUNSEL. Deponent testifying from Durango,
Colorado, beginning at 9:02 a.m. and ending at 5:19 p.m.
Mountain Standard Time, on Tuesday, October 25, 2022,
before Megan F. Alvarez, RPR, Certified Shorthand
Reporter No. 12470.

1 APPEARANCES: (ALL PARTIES APPEARING VIA VIDEOCONFERENCE)

2

3 FOR PLAINTIFFS:

4

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14 JOHN JANHUNEN, GOOGLE IN-HOUSE COUNSEL

15
16 THE VIDEO OPERATOR:

17 SEAN GRANT, VERITEXT

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2 WITNESS EXAMINATION
3 ERIC MIRAGLIA
4 VOLUME I
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1 EXHIBITS MARKED FOR IDENTIFICATION

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		Miraglia to David Monsees,																								
		Subject: Go/n3:retention (....-																								
		In the interim, we still need WAA																								
		as..., Bates GOOG-RDGZ-00039338																								
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		Weber, Yurii Sushko, Subject:																								
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	Exhibit 103	E-mail string, topmost dated 76 1/6/17 from Mahalia Miller to Debbie Blackwood, copying Eric Miraglia, Subject: Re: Issue 27172760: CB2: consider targeting some users with WAA off who never turned it off, with different consent text, Bates GOOG-RDGZ-00150067 through 150069																						

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4		Documenting consent bump for
5		translators," Bates
6		GOOG-RDGZ-00149527 through 149533
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8	Exhibit 105	E-mail string, topmost dated101
9		6/10/16 from Jens Mueller to
10		Jonathan McFie copying Greg Fair,
11		Adam Wos, David Warren, Eric
12		Miraglia, Felipe Lora, Mahalia
13		Miller, Sara Walsh, Subject:
14		Re: Effect of flipping SWAA,
15		Bates GOOG-RDGZ-00149701 and
16		149702
17		
18	Exhibit 106	E-mail string, topmost dated121
19		10/11/19 from Dave Greenwood to
20		Seb Grubb copying Greg Fair, Sam
21		Heft-Luthy, Davis Treybig, Ryan
22		Drake, Sagar Kamdar, Eric
23		Miraglia, Liza Ma, Subject: Re:
24		Android Privacy Advisor, Bates
25		GOOG-RDGZ-00013767 through 13772

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4		11/29/18 from Giles Hogben to
5		Dave Kleidermacher, copying
6		Sammit Adhya, Bridget Brennan,
7		Eric Miraglia, Subject: Re:
8		incognito, Bates
9		GOOG-RDGZ-00150939 through 150941
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12		Dec, Confidential, Spring 2016,"
13		Bates GOOG-RDGZ-00149889 through
14		149945
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17		for N2 page 3, Transparency,"
18		Bates GOOG-RDGZ-00149585 through
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3	Exhibit 111	Document entitled "Additional148 possible linkouts," Bates GOOG-RDGZ-00149617 through 149630
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7	Exhibit 112	E-mail string, topmost dated160 5/8/2020 from Dave Monsees to Sam Heft-Luthy, Eric Miraglia, Suneeti Vakharia, Vlad Adzic, copying Micha Segeritz, Reed La Botz, Catherine Wu, Jessica Gan Lee, Irene Nyavor, Micah Laaker, Subject: Re: Promoting retention setting in Privacy Checkup, Bates GOOG-RDGZ-00151485 through 151487
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11 Exhibit 114 E-mail string, topmost dated170

12 3/14/17 from Kay Chen to Stephan

13 Micklitz, copying Eric Miraglia,

14 Martin Sramek, Dominic Battre,

15 Sabine Borsay, Leslie Liu,

16 Subject: Re: swAA and CCT, Bates

17 GOOG-RDGZ-00150083 through 150085

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19 Exhibit 115 E-mail string, topmost dated175

20 7/13/17 from Micha Segeritz to

21 Eric Miraglia, copying Ayelet

22 Benjamini, Greg Fair, Eric

23 Hollingsworth, Vani Henderson,

24 Chen Elkind, Ilan Caron, Subject:

25 Re: UDC settings & Na[REDACTED] to

26 Magic Eye?, Bates

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8	9 5/23/17 from Yijian Bai to Emil	10 Ochotta, copying Eric Miraglia,
11	12 Jianjun Qiu, Xiaonan Zhang, Yibo	13 Chen, Gary Sun, Chen Liu, Yihong
14	15 Zhou, Eric Hollingsworth,	16 Subject: Re: N2 consent bump
17	18 percentage, Bates	19
20	21 GOOG-RDGZ-00150195 through 150197	22
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26	27 Holden to Shashidhar Thakur, Sam	
28	29 Heft-Luthy, Eric Miraglia,	
30	31 Stephanie Friedman, Walt	
32	33 Drummond, David Warren, et al.,	
34	35 copying Jen Teixeira, Meredith	
36	37 Hoffer, Sergio Civetta, Crystal	
38	39 Dahlen, Subject: Notes: Privacy	
40	41 Advisor in Search [Product	
42	43 Review] - July 24, 2018, Bates	
44	45 GOOG-RDGZ-00116861 through 116866	

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7	8 8/14/18 from Flavia Sekles to	
9	10 David Monsees, copying Marlo	
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13	14 Eric Miraglia, Milana McCullagh,	
15	16 Jack Menzel, Subject: Re: AP	
17	18 Story on Location, Bates	
18	19 GOOG-RDGZ-00020740 through 20742	
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20	21 Replacement Study Q1 2020," Bates	
21	22 GOOG-RDGZ-00118261 through 118266	
22	23 Exhibit 120 E-mail string, topmost dated195	
23	24 7/20/2020 from Chris Ruemmler to	
24	25 David Monsees, copying Othar	
25	26 Hansson, Eric Miraglia, Greg	
26	27 Fair, Maya Grabovac, Subject:	
27	28 Re: My Activity	
28	29 Support/Viability, Bates	
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5	6 Exhibit 121 Translation document, "Some new202	
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	9 GOOG-RDGZ-00149595 through 149602	
10	11 Exhibit 122 Translation document, "Some new205	
	12 features for your Google	
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	14 GOOG-RDGZ-00149603 through 149606	
15	16 Exhibit 123 Document entitled "Retention210	
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5	6 Exhibit 124 E-mail dated 6/9/2020 from Kevin ...219	7
8	9 Luu to Bryan Horling, Divya	10
11	12 Sharma, Maxwell Mosley, Anand	13
14	15 Degwekar, Matt Harren, Dave	16
17	18 Monsees, Thomas Roessler,	19
20	21 Philippe de Lurand Pierre-Paul,	22
23	24 copying Eric Miraglia, Subject:	25
26	27 [Updates] WAA-off Logging	
28	29 Changes: Modifying Gaia ID in	
30	31 WAA-off logs to prevents	
32	33 unintentional personalization,	
34	35 Bates GOOG-RDGZ-00151524 through	
36	37 151526	
38	39 Exhibit 125 Document entitled "UDC Web226	
40	41 Settings revamp," Bates	
42	43 GOOG-RDGZ-00178539 through 178541	
44	45 Exhibit 126 Document entitled "PDPO Do [REDACTED]234	
46	47 Summit," Bates GOOG-RDGZ-00150449	
48	49 through 150568	

1 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER

2 Page Line

3 No. No.

4 Q. All right. Mr. Miraglia, do you225 19
5 recall before the break I asked you
6 whether you're aware of any
regulator inquiries into WAA?

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TUESDAY, OCTOBER 25, 2022

9:02 A.M. (M.S.T.)

--○○○--

THE VIDEO OPERATOR: Good morning. We're 09:02:29

going on the record at 9:02 a.m., and the date is 09:02:30
October 25, 2022. 09:02:33

Please note that this deposition is being 09:02:37
conducted virtually. Quality of recording depends 09:02:38
on the quality of camera and Internet connection of 09:02:42
participants. What is seen from the witness and 09:02:45
heard on screen is what will be recorded. 09:02:48

Audio and video recording will continue to 09:02:51
take place unless all parties agree to go off the 09:02:53
record. 09:02:56

This is Media Unit Number 1 of the 09:02:57
video-recorded deposition of Eric Miraglia taken by 09:02:58
counsel for plaintiff in the matter of 09:03:01
Anibal Rodriguez, et al. vs. Google LLC, filed in 09:03:03
the United States District Court, Northern District 09:03:07
of California, San Francisco, Case 09:03:10
Number 3:20-CV-04688, and is being conducted 09:03:12
remotely using virtual technology. 09:03:20

25 My name is Sean Grant from the firm of 09:03:23

1	Veritext. I'm the videographer.	09:03:26
2	The court reporter is Megan Alvarez, also	09:03:28
3	from Veritext.	09:03:29
4	I am not related to any party in this	09:03:30
5	action, nor am I financially interested in the	09:03:32
6	outcome.	09:03:35
7	If there are objections to proceeding,	09:03:36
8	please state them at the time of your appearance.	09:03:37
9	Counsel and all present, including	09:03:40
10	remotely, will now state their appearance and	09:03:41
11	affiliation for the record beginning with the	09:03:43
12	noticing attorney.	09:03:46
13	MR. FRAWLEY: Good morning. Alexander	09:03:50
14	Frawley from Susman Godfrey for the plaintiffs.	09:03:53
15	With me is my colleague Mark Mao from the	09:03:55
16	law firm of Boies Schiller Flexner.	09:03:59
17	MR. HUR: Good morning. Ben Hur from	09:04:01
18	Willkie Farr & Gallagher for defendant Google.	09:04:02
19	I'm here with my client, John Janhunen,	09:04:05
20	from Google, and my colleague, Harris Mateen.	09:04:07
21	And, of course, also for the witness,	09:04:11
22	Eric Miraglia.	09:04:12
23	THE VIDEO OPERATOR: Thank you.	09:04:18
24	Will the certified court reporter please	09:04:18
25	swear the witness.	09:04:19

1		09:04:19
2	ERIC MIRAGLIA,	09:04:19
3	called as a witness by the Plaintiffs, having	09:04:19
4	been first duly sworn, was examined and	09:04:19
5	testified as follows:	09:04:41
6		09:04:41
7	--oo--	09:04:41
8	EXAMINATION	
9	BY MR. FRAWLEY:	09:04:41
10	Q. Good morning, Mr. Miraglia.	09:04:42
11	A. Good morning.	09:04:44
12	Q. Could you please state your name for the	09:04:46
13	record?	09:04:47
14	A. Eric Miraglia.	09:04:49
15	Q. And, Mr. Miraglia, have you testified	09:04:50
16	before?	09:04:52
17	A. No.	09:04:54
18	Q. And do you -- do you understand that you	09:04:57
19	are under oath today?	09:04:58
20	A. I do.	09:05:00
21	Q. Is there any reason why you cannot testify	09:05:02
22	truthfully today?	09:05:06
23	A. No.	09:05:07
24	Q. And throughout today's deposition, if any	09:05:12
25	of my questions are unclear, would you please let me	09:05:13

1	MR. HUR: Alex, we've been going about an	11:15:24
2	hour. Do you want to take a break now? Do you want	11:15:26
3	o finish another -- one more exhibit?	11:15:27
4	MR. FRAWLEY: What would you like to do,	11:15:31
5	Mr. Miraglia? Totally up to you.	11:15:32
6	THE WITNESS: I'm totally good to proceed.	11:15:36
7	Whatever everybody wants to do.	11:15:39
8	MR. FRAWLEY: Okay. I'll do one more	11:15:41
9	document then, and then we can take a break.	11:15:43
10	Does that sound good to you, Mr. Miraglia?	11:15:46
11	THE WITNESS: Yes.	11:15:48
12	(Whereupon Exhibit 105 was marked for	01:06:31
13	identification.)	01:06:31
14	BY MR. FRAWLEY:	11:15:49
15	Q. Okay. So I just introduced an exhibit. I	11:15:49
16	forgot to put the stamps. We'll fix that later.	11:16:10
17	But please let me know when you have the unstamped	11:16:13
18	exhibit in front of you.	11:16:16
19	A. I see the -- the document. I'm going to	11:16:34
20	review it now.	11:16:34
21	(Witness reviewing document.)	11:16:35
22	BY MR. FRAWLEY:	
23	Q. Okay. And, for the record, this will be	11:16:35
24	eventually be stamped Exhibit 105, Bates Number	11:16:36
25	GOOG-RDGZ-00149701.	11:16:40

1	A. Okay. Thank you.	11:18:01
2	Q. Sure.	11:18:02
3	I don't know if I'm going to pronounce the	11:18:05
4	name right, but you see the e-mail is from	11:18:07
5	Jens Miller -- Mueller?	11:18:10
6	A. Jens Mueller.	11:18:11
7	Q. Jens Mueller.	11:18:13
8	Okay. Who is Jens Mueller?	11:18:13
9	A. Jens was an engineer on the team working	11:18:18
10	on consent bump.	11:18:23
11	Q. Who is Jonathan McPhie?	11:18:25
12	A. Jonathan McPhie in 2016 was a product	11:18:32
13	manager. I don't recall whether he reported to me,	11:18:43
14	but he was working on this project with us.	11:18:46
15	Q. Which project you're referring to that he	11:18:54
16	was working on with you?	11:18:57
17	A. Na[REDACTED] 2.0.	11:18:58
18	Q. I think you might have mentioned him	11:19:02
19	before, but maybe you can tell me again.	11:19:04
20	Who is Greg Fair?	11:19:06
21	A. Greg Fair in 2016 was a product manager on	11:19:12
22	my team.	11:19:14
23	Q. And do you see the bottom e-mail in the	11:19:15
24	document, so the first e-mail, was an e-mail from	11:19:24
25	Ian -- sorry -- Jens Mueller?	11:19:27

1	A. I do.	11:19:31
2	Q. And do you see where -- is that he? Is	11:19:36
3	that right, he?	11:19:40
4	A. He.	11:19:41
5	Q. Do you see where he wrote: "When a user	11:19:42
6	accepts CB2, we're enabling sWAA"?	11:19:44
7	A. Yes.	11:19:54
8	Q. And then do you see on the next page where	11:19:54
9	he wrote: "I claim enabling sWAA means we collect	11:19:56
10	more data, Chrome history data, for example"?	11:20:01
11	Do you see that?	11:20:04
12	A. I do.	11:20:06
13	Q. And then do you see where he asks: "Is	11:20:07
14	this correct?"	11:20:09
15	A. I do.	11:20:12
16	Q. And then do you see where he goes on: "I	11:20:13
17	am confused by David's comments here," and then	11:20:15
18	there's a hyperlink?	11:20:17
19	A. I do.	11:20:20
20	Q. And then do you see where he continues:	11:20:21
21	"He is saying we are not collecting new types of	11:20:23
22	data"?	11:20:26
23	A. I see that, yes.	11:20:29
24	Q. Now, can you turn to the first page?	11:20:33
25	And do you see the e-mail in the middle of	11:20:39

1 the page, Thursday, June 9, 2016, from Greg Fair? 11:20:42
2 A. I do. 11:20:48
3 Q. And -- oh, I'm sorry. While we are on the 11:20:51
4 other page, I should have asked you: If you know, 11:20:54
5 is that David Monsees when he's referring to 11:20:56
6 "David's comment"? 11:21:01
7 MR. HUR: Objection. Calls for 11:21:03
8 speculation. 11:21:03
9 THE WITNESS: I don't know for sure, no. 11:21:13
10 BY MR. FRAWLEY: 11:21:15
11 Q. Do you recall any other Davids who would 11:21:16
12 have been working on this project? 11:21:19
13 A. I do. 11:21:22
14 Q. Okay. Which other Davids? 11:21:23
15 A. David Warren was the lead writer for -- 11:21:30
16 Q. Now -- sorry. Now we can go back to that 11:21:38
17 Greg Fair e-mail that I was just asking -- about to 11:21:40
18 ask about a moment ago. 11:21:42
19 So Thursday, June 9, 2016, 9:59 a.m., 11:21:42
20 Greg Fair. 11:21:46
21 Do you see that e-mail? 11:21:48
22 A. I do. 11:21:48
23 Q. Do you see where he wrote: "I believe 11:21:49
24 this semantic difference here is that there are 11:21:51
25 different definitions of 'collect.' Jens, you are 11:21:53

1	saying that 'collect' equals 'associate directly	11:21:58
2	with your GAIA and durably store in footprints. '"	11:22:01
3	Do you see that?	11:22:06
4	A. I do.	11:22:06
5	Q. And then do you see where you wrote: "The	11:22:07
6	data sources pulled into sWAA, however, are all	11:22:10
7	'collected' one way or another already, whether it	11:22:12
8	be via Chrome Sync or ads, cookies/profiles or	11:22:17
9	on-device local storage."	11:22:22
10	Do you see that?	11:22:25
11	A. I do.	11:22:26
12	Q. And then if you go up in the e-mail, do	11:22:30
13	you see there's an e-mail from Jonathan McPhie?	11:22:32
14	A. I do.	11:22:37
15	Q. And do you see where he wrote: "+1 to	11:22:40
16	what Greg said. Our definition of 'collect' is more	11:22:42
17	like 'stored' and can apply to things like local	11:22:46
18	Chrome history storage or storage of activity	11:22:50
19	against a pseudonymous identifier. From that	11:22:53
20	perspective, sWAA and CB2 is more about moving data	11:22:59
21	around and not about 'collecting' more data."	11:23:03
22	Do you see that?	11:23:08
23	A. I do.	11:23:08
24	Q. Do you agree with the statements that	11:23:09
25	Mr. McPhie expressed in this particular e-mail?	11:23:11

1	MR. HUR: Objection. Compound. Vague.	11:23:15
2	Foundation.	11:23:19
3	THE WITNESS: Alex, you're referring	11:23:33
4	specifically to the Jonathan McPhie 7:06 p.m.,	11:23:35
5	June 9th e-mail?	11:23:40
6	BY MR. FRAWLEY:	11:23:42
7	Q. Yes, exactly.	11:23:42
8	A. Yes, I agree with -- I agree with that.	11:24:03
9	Q. Can you tell me, what is a pseudonymous	11:24:16
10	identifier?	11:24:25
11	A. A pseudonymous identifier -- and I'm going	11:24:25
12	to speak to you not as an engineer but as a product	11:24:35
13	manager context -- is at least semi-stable	11:24:39
14	identifier that can be used to link activity in a	11:24:42
15	session of some duration.	11:24:47
16	Q. Is pseudonymous different from anonymous?	11:24:53
17	MR. HUR: Objection. Calls for	11:25:02
18	speculation. Lacks foundation.	11:25:02
19	THE WITNESS: I would just share with you	11:25:06
20	my understanding. We're talking about technical	11:25:09
21	terms, and some of them have very different	11:25:11
22	contexts, have very specific definitions.	11:25:13
23	But, generally speaking, we would use	11:25:18
24	"anonymous" to refer to data that cannot be tied to	11:25:21
25	a data subject whereas pseudonymous data, in some	11:25:29

1	cases, may be.	11:25:36
2	BY MR. FRAWLEY:	11:25:37
3	Q. How might, in some cases, pseudonymous	11:25:37
4	data be tied to a subject?	11:25:41
5	MR. HUR: Objection. Foundation. Calls	11:25:44
6	for speculation.	11:25:45
7	THE WITNESS: Pseudonymous data doesn't --	11:25:59
8	again, at a very high level, very high level of	11:25:59
9	understanding for me. Pseudonymity is usually --	11:26:02
10	usually referring to data that has not been	11:26:07
11	mathematically anonymized. And so there's always at	11:26:10
12	least the hypothetical possibility of	11:26:14
13	reidentification.	11:26:25
14	BY MR. FRAWLEY:	11:26:26
15	Q. If you know, when SWAA is off, would	11:26:27
16	Google store that data with pseudonymous	11:26:32
17	identifiers?	11:26:35
18	MR. HUR: Objection. Lacks foundation.	11:26:39
19	Vague.	11:26:39
20	THE WITNESS: Alex, at the very least, I	11:26:48
21	would have to say that it depends. And let me give	11:26:53
22	you one example.	11:26:58
23	Chrome -- Chrome Sync data would be stored	11:27:01
24	to GAIA even if SWAA was off. SWAA would then just	11:27:06
25	control the use of that data, if that makes sense.	11:27:13

1	BY MR. FRAWLEY:	11:27:16
2	Q. And how does SWAA exactly control how the	11:27:48
3	data is used?	11:27:52
4	MR. HUR: Objection. Vague. Foundation.	11:27:54
5	THE WITNESS: If I have Chrome Sync turned	11:28:06
6	on -- let me qualify and just say a high-level	11:28:09
7	understanding evolves over time as Chrome evolves.	11:28:12
8	I'm giving you my -- my understanding sitting here.	11:28:16
9	Chrome Sync allows me to sync bookmarks	11:28:19
10	and history across different instances of Chrome, so	11:28:22
11	Chrome on my phone, Chrome on my laptop.	11:28:26
12	If SWAA is off, that data stays with	11:28:31
13	Chrome in terms of the way it's stored against my	11:28:34
14	GAIA. Supplemental Web & App Activity would allow,	11:28:38
15	for example, discover feed and search to use that	11:28:41
16	data to give me a better discover feed.	11:28:44
17	BY MR. FRAWLEY:	11:28:52
18	Q. Do you recall testifying earlier that a	11:28:53
19	pseudonymous identifier can be used to link activity	11:28:56
20	in a session of some duration?	11:28:57
21	A. Yes.	11:29:00
22	Q. So does linking activity have anything to	11:29:04
23	do with conversions?	11:29:08
24	MR. HUR: Objection. Vague. Foundation.	11:29:11
25	Calls for speculation.	11:29:12